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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/727,567	11/30/2000	Karen Ann Bradley	50325-0504	6744

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EXAMINER	
LIN, KENNY S	

ART UNIT	PAPER NUMBER
2154	4

DATE MAILED: 03/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/727,567	BRADLEY ET AL.	
	Examiner	Art Unit	
	Kenny Lin	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 November 2000*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-20 are presented for examination.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because it fails to fall within the range of 50 to 150 words. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3, 6-9, 12-15 and 18-20 rejected under 35 U.S.C. 102(e) as being anticipated by Shurmer et al (hereinafter Shurmer), US 5,974,237.

6. As per claims 1, 7 and 19, Shurmer taught the invention as claimed including a method for monitoring a level of network service offered by a service provider, the method comprising the computer-implemented steps of:

a. Receiving data defining one or more tests for monitoring the level of network service that is being provided to a particular customer (col.1, lines 54-55, col.16, lines 39-43, col.20, lines 52-56);

b. Creating and storing information defining a specific time range for when the one or more tests are to be enforced (col.16, lines 35-39);

c. Distributing the one or more tests to one or more agents, wherein the one or more agents are configured to communicate with devices that are associated with the network (col.1, lines 54-58, 64-67, col.16, lines 39-43, col.20, lines 52-56); and

d. Configuring the devices to perform the one or more tests within the specific time range (col.13, lines 19-28, col.16, lines 35-39).

7. As per claim 13, Shurmer taught the invention as claimed including a network device configured for monitoring a level of network service offered b y a service provider, comprising:

a. A network interface (col.5, lines 37-38);

b. A processor coupled to the network interface and receiving information from the network interface (col.5, lines 27-45);

c. A computer-readable medium accessible by the processor and comprising one or more sequences of instructions (inherently known feature) which, when executed by the processor, cause the processor to carry out the steps of:

i. Receiving data defining one or more tests for monitoring the level of network service that is being provided to a particular customer (col.1, lines 54-55, col.16, lines 39-43, col.20, lines 52-56);

ii. Creating and storing information defining a specific time range for when the one or more tests are to be enforced (col.16, lines 35-39);

iii. Distributing the one or more tests to one or more agents, wherein the one or more agents are configured to communicate with devices that are associated with the network (col.1, lines 54-58, 64-67, col.16, lines 39-43, col.20, lines 52-56); and

iv. Configuring the devices to perform the one or more tests within the specific time range (col.13, lines 19-28, col.16, lines 35-39).

8. As per claims 2, 8, 14 and 20, Shurmer taught the invention as claimed in claim 1. Shurmer further taught to include the steps of:

a. Receiving result information based on the devices performing the one or more tests (col.20, lines 48-52, 59-67); and

b. Creating and storing reporting information that indicates whether the customer is receiving, during the specific time range, the level of network service offered by the service provider (col.20, lines 59-67, col.21, lines 1-3, col.23, lines 46-56).

9. As per claims 3, 9 and 15, Shurmer taught the invention as claimed in claim 1. Shurmer further taught where the step of receiving data defining one or more tests for monitoring the level of network service further includes the step of receiving time information that defines the specific time range for when the one or more tests are to be enforced (col.16, lines 35-39).

10. As per claims 6, 12 and 18, Shurmer taught the invention as claimed in claim 1. Shurmer further taught wherein the step of configuring the devices includes the step of configuring the devices to perform the one or more tests only within the specific time range (col.13, lines 19-28, col.16, lines 35-39).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. Claims 5, 11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shurmer et al (hereinafter Shurmer), US 5,974,237, in view of Schuster et al (hereinafter Schuster), US 6,363,053.

13. As per claims 5, 11 and 17, Shurmer taught the invention substantially as claimed in claims 1, 7 and 13. Shurmer further taught to allow users to define specific times for monitoring

the level of service that is being provided by the service provider (col.13, lines 19-28, col.16, lines 35-39). Shurmer did not specifically teach to further comprising the steps of:

a. Generating, at a server, interface data for defining a service level contract; and

b. Communicating the interface data to a client that is remote form said server, wherein the interface data allows users to define specific times for monitoring the level of service that is being provided by the service provider.

14. Schuster taught to generate, at a server, interface data for defining a service level contract (col.1, lines 61-67, col.2, lines 1-18, 62-65, col.5, lines 8-12) and to communicate the interface data to a client that is remote from the server (col.5, lines 8-12). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Shurmer and Schuster because Schuster's teaching of generating interface data defining a service level contract help Shurmer's method to define the one or more tests for monitoring the level of network according to a specific time frame that the customers stated in the contract.

15. Claims 4, 10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shurmer et al (hereinafter Shurmer), US 5,974,237, in view of Schuster et al (hereinafter Schuster), US 6,363,053, and Ballantyne et al (hereinafter Ballantyne), US 6,687,873.

16. As per claims 4, 10 and 16, Shurmer taught the invention substantially as claimed in claims 1, 7 and 13. Shurmer did not specifically teach to further comprising the steps of:

a. Generating a schema based on Extensible Markup Language, wherein the schema provides a template for defining a service level contract; and

b. Wherein the step of receiving information defining the one or more tests includes the step of receiving data defining a service level contract based on said schema.

17. Schuster taught to generate a schema wherein the schema provides a template for defining a service level contract (col.1, lines 61-67, col.2, lines 1-18, 62-65, col.5, lines 8-12). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Shurmer and Schuster because Schuster's teaching of generating a schema defining a service level contract help Shurmer's method to define the one or more tests for monitoring the level of network according to what the customers stated in the contract. Shurmer and Schuster did not specifically teach that the schema is generated based on XML. However, Ballantyne taught to create schema in XML format (col.2, lines 44-46, col.6, lines 10-26). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Shurmer, Schuster and Ballantyne because Ballantyne's teaching of creating reports in XML format help Shurmer and Schuster's method to create schema which defines a service level contract in XML format.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wainwright, US 5,488,715.

Natarajan et al, US 6,584,502.

19. A shortened statutory period for reply to this Office action is set to expire THREE MONTHS from the mailing date of this action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenny Lin whose telephone number is (703)305-0438. The examiner can normally be reached on 8 AM to 5 PM Tuesday to Friday and every other Monday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (703)305-8498. Additionally, the fax numbers for Group 2100 are as follows:

Official Responses: (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-6121.

ksl
March 5, 2004

JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100